

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOANNE M. QUIDING,)
Plaintiff,) Case No. C04-2415-MJP-JPD
v.)
JO ANNE B. BARNHART, Commissioner) REPORT AND RECOMMENDATION
Social Security Administration,)
Defendant.)

Plaintiff Joanne M. Quiding proceeds through counsel in her appeal of a final decision of the Commissioner of the Social Security Administration (the “Commissioner”). The Commissioner denied plaintiff’s application for Supplemental Security Income (“SSI”) under Title XVI of the Social Security Act after a hearing before an Administrative Law Judge (“ALJ”). For the reasons set forth below, the Court recommends that the final decision of the Commissioner be affirmed and the suit dismissed.

I. FACTS AND PROCEDURAL HISTORY

Plaintiff is a fifty-three-year-old mother of two adult children. AR 40-42, 191. She has an education through the eleventh grade and has held a variety of jobs, including welder, nurse's aide, and babysitter. AR 40-42, 100.

On January 27, 1994, plaintiff filed an application for SSI disability benefits, alleging she had been disabled since January 1, 1994, as a result of arm impairments, headaches, bladder

01 impairments, and difficulty breathing. AR 191-92, 220. The Commissioner, however, denied
02 plaintiff's application initially and upon reconsideration. AR 216-19, 223-26. A hearing before
03 an ALJ led to a finding of not disabled, but plaintiff appealed to the Appeals Council ("AC"),
04 which remanded the case for reconsideration. AR 37-72, 485-88, 542-50.

05 A second hearing was held on February 16, 1999, following which an ALJ again found
06 plaintiff not to be disabled. AR 73-116. Specifically, the ALJ found that plaintiff was
07 incapable of performing past relevant work, but that she was capable of performing medium
08 work available in the national economy. AR 73-116, 560-72. Plaintiff again appealed, and the
09 AC remanded the decision for further administrative proceedings. AR 621-26.

10 Following plaintiff's third hearing before an ALJ on December 9, 2002, again plaintiff
11 was found not to be disabled. AR 18-36, 117-190. The ALJ found plaintiff was not capable of
12 her past relevant work, but that she was capable of performing certain light work available in
13 the national economy. AR 35-36. Plaintiff appealed, but the AC denied her request for
14 review. AR 11. The ALJ's third decision therefore constitutes the final decision of the
15 Commissioner for purposes of this Court's review. Plaintiff timely filed suit in this Court,
16 seeking review of the Commissioner's final decision. Dkt. No. 1.

17 II. JURISDICTION

18 This Court has jurisdiction to review the ALJ's decision pursuant to 42 U.S.C. §§
19 405(g), 1383(c)(3).

20 III. STANDARD OF REVIEW

21 The district court may set aside the Commissioner's denial of social security benefits
22 when the ALJ's findings are based on legal error or not supported by substantial evidence in
23 the record as a whole. *See* 42 U.S.C. § 405(g); *Smolen v. Chater*, 80 F.3d 1273, 1279 (9th
24 Cir. 1996) (internal citations omitted). Substantial evidence is defined as more than a mere
25 scintilla but less than a preponderance; it is such relevant evidence as a reasonable mind might
26 accept as adequate to support a conclusion. *Smolen*, 80 F.3d at 1279. The ALJ is responsible

01 for determining credibility, resolving conflicts in medical testimony, and for resolving
 02 ambiguities. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). Where the evidence is
 03 susceptible to more than one rational interpretation, it is the Commissioner's conclusion that
 04 must be upheld. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002) (quoting *Smolen*, 80
 05 F.3d at 1292).

06 If the court determines that the ALJ erred, the court has discretion to remand for
 07 further proceedings or to award benefits. *See Marcia v. Sullivan*, 900 F.2d 172, 176 (9th Cir.
 08 1990). The court may direct an award of benefits where "the record has been fully developed
 09 and further administrative proceedings would serve no useful purpose." *McCartey v.*
 10 *Massanari*, 298 F.3d 1072, 1076 (9th Cir. 2002).

11 Such a circumstance arises when: (1) the ALJ has failed to provide legally
 12 sufficient reasons for rejecting the claimant's evidence; (2) there are no
 13 outstanding issues that must be resolved before a determination of disability can
 14 be made; and (3) it is clear from the record that the ALJ would be required to
 15 find the claimant disabled if he considered the claimant's evidence.

16 *Id.* at 1076-77.

17 IV. EVALUATING DISABILITY

18 As the claimant, Ms. Quiding bears the burden of proving that she is disabled within the
 19 meaning of the Social Security Act. *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999).
 20 Disability is defined as the "inability to engage in any substantial gainful activity by reason of
 21 any medically determinable physical or mental impairment, which can be expected to result in
 22 death, or which has lasted or can be expected to last for a continuous period of not less than
 23 twelve months[.]" 42 U.S.C. § 423(d)(1)(A). A claimant is disabled only if her impairments
 24 are of such severity that she is not only unable to do her previous work, but cannot,
 25 considering her age, education, and work experience, engage in any other substantial gainful
 26 activity existing in the national economy. *See* 42 U.S.C. §§ 423(d)(2)(A), 1382(c)(a)(3)(B);
see also Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999).

1 The Social Security regulations set out a five-step sequential evaluation process for
2 determining whether a claimant is disabled within the meaning of the Social Security Act. *See*
3 20 C.F.R. §§ 404.1520, 416.920. At step one, the claimant must establish that she is not
4 engaging in any substantial gainful activity. 20 C.F.R. §§ 404.1520(b), 416.920(b). If the
5 claimant does so, then at step two, the claimant must establish that she has one or more
6 medically severe impairments or combination of impairments that limit her physical or mental
7 ability to do basic work activities. If the claimant does not have such impairments, she is not
8 disabled. 20 C.F.R. §§ 404.1520(c), 416.920(c). If the claimant does have a severe
9 impairment, the Commissioner moves to step three to determine whether the impairment meets
10 or equals any of the listed impairments described in the regulations. 20 C.F.R. §§ 404.1520(d),
11 416.920(d). A claimant who meets one of the listings for the required twelve-month duration
12 requirement is disabled. *Id.*

When the claimant’s impairment neither meets nor equals one of the impairments listed in the regulations, the Commissioner must proceed to step four and evaluate the claimant’s residual functional capacity (“RFC”). 20 C.F.R. §§ 404.1520(e), 416.920(e). Here, the Commissioner evaluates the physical and mental demands of the claimant’s past relevant work to determine whether the claimant can still perform that work. *Id.* If the claimant is not able to perform her past relevant work, then the burden shifts to the Commissioner at step five to show that the claimant can perform some other work that exists in significant numbers in the national economy, taking into consideration the claimant’s RFC, age, education, and work experience. 20 C.F.R. §§ 404.1520(f), 416.920(f); *Tackett*, 180 F.3d at 1099-100. If the Commissioner finds the claimant is unable to perform other work, then the claimant is found disabled and benefits may be awarded.

V. DECISION BELOW

25 On May 14, 2003, the ALJ issued his decision, finding, among other things:

26 1. The claimant has not engaged in substantial gainful activity since the

alleged onset of disability.

2. The claimant has an impairment or a combination of impairments considered “severe” based on the requirements in 20 C.F.R. § 416.920(b).
3. These medically determinable impairments do not meet or medically equal one of the listed impairments in Appendix 1, Subpart P, Regulation No. 4.
4. The undersigned finds the claimant’s allegations regarding her limitations are not totally credible for the reasons set forth in the body of the decision.

...
6. The claimant retains the residual functional capacity to occasionally lift and/or carry 20 pounds, frequently lift and/or carry 10 pounds, stand and/or walk about 6 hours in an 8-hour workday, and sit about 6 hours in an 8-hour workday. She has some limitations in grip and manipulation, left worse than right. She is limited to simple, structured, repetitive tasks due to possible concentration problems. Due to possible problems in dealing with supervisors, coworkers, and the general public, she needs to work at a product-oriented job with no close interaction with other people.
7. The claimant is unable to perform any of her past relevant work (20 C.F.R. § 416.965).
8. At the alleged onset date, the claimant was a “younger individual between the ages of 45 and 49” (20 C.F.R. § 416.963).
9. The claimant is currently an “individual closely approaching advanced age” (20 C.F.R. § 416.964).
10. The claimant has an 11th grade or “limited” education (20 C.F.R. § 416.964).
11. The claimant has no transferable skills from any past relevant work and/or transferability of skills is not an issue in this case (20 C.F.R. § 416.968).
12. The claimant has the residual functional capacity to perform a significant range of light work (20 C.F.R. § 416.967).
13. Although the claimant’s exertional limitations do not allow her to perform the full range of light work, using vocational testimony and Medical-Vocational Rules 202.18 and 202.11 as a framework for decision-making, there are a significant number of jobs in the national economy that she could perform. Examples of such jobs include work as: a warehouse worker/material handler (DOT# 922.687-038) for

01 which there are 208,000 jobs in the United States and 4,000 jobs in the
02 State of Washington; an office cleaner (DOT # 381.687-018) for which
03 there are 125,000 jobs in the United States and 3,300 jobs in the State
04 of Washington; and a launderer (DOT# 361687-030) for which there are
05 54,000 jobs in the United States and 1,000 jobs in the State of
06 Washington. All of these jobs are light, unskilled positions.

07 14. The claimant was not under a “disability,” as defined in the Social
08 Security Act, at any time through the date of this decision (20 C.F.R. §
09 416.920(f)).

10 AR 35-36.

11 VI. ISSUES ON APPEAL

12 A. Did the ALJ err by failing to provide the vocational expert with a hypothetical
13 that accurately portrayed all of plaintiff’s impairments?
14 B. Did the ALJ err by improperly resolving the discrepancies between the
15 vocational expert’s testimony and the job descriptions he identified in the
16 Dictionary of Occupational Titles?

17 VII. DISCUSSION

18 A. The ALJ Provided an Accurate Hypothetical to the Vocational Expert.

19 Plaintiff argues that the ALJ erred by failing to provide a hypothetical to the vocational
20 expert (“VE”) that accurately portrayed all of her impairments. Dkt. No. 13. Specifically, she
21 argues that the ALJ failed to include many of her mental impairments in his hypothetical and
22 that the functional restrictions he did include in his hypothetical were “totally inadequate.” *Id.*
23 Plaintiff complains about the way in which the ALJ weighed the medical evidence and argues
24 that the ALJ “should have given Dr. Parlatore’s opinions . . . great weight regarding plaintiff’s
25 mental functioning abilities.” *Id.*

26 In her response, the Commissioner argues that the ALJ’s hypothetical accurately
27 contained all of plaintiff’s limitations that were supported by the record. Dkt. No. 15. Further,
28 she argues that the ALJ properly weighed the medical evidence of record and concluded Dr.
29 Parlatore’s opinions were entitled to less weight than other physicians. *Id.*

01 1. The ALJ Properly Evaluated the Medical Testimony.

02 This case involves a record of almost 800 pages, including the medical opinions of
03 more than a dozen medical doctors, vocational professionals, and psychologists. The ALJ
04 thoroughly documented these opinions, evaluated them, and explained the weight he accorded
05 them. AR 23-33.06 An ALJ may disregard the opinions of a treating physician whether or not that opinion
07 is contradicted. *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989). Where a treating
08 physician's opinion is not contradicted by another physician, it may be rejected only for "clear
09 and convincing" reasons supported by substantial evidence in the record. *Reddick*, 157 F.3d at
10 725. When a treating physician's opinion is controverted by other medical opinions, however,
11 the ALJ may only reject it if he provides specific and legitimate reasons based on substantial
12 evidence in the record. *Andrews v. Shalala*, 53 F.3d 1035, 1043 (9th Cir. 1995); *Murray v.*
13 *Heckler*, 722 F.2d 499, 502 (9th Cir. 1983). "The ALJ can meet this burden by setting out a
14 detailed and thorough summary of the facts and conflicting clinical evidence, stating his
15 interpretation thereof, and making findings." *Magallanes*, 881 F.2d at 751 (quoting *Cotton v.*
16 *Bowen*, 799 F.2d 1403, 1408 (9th Cir. 1986)).17 Dr. Parlatore treated plaintiff for approximately one year. AR 767-92. He diagnosed
18 plaintiff with anxiety, depression, and affective disorders. He assessed her with marked
19 limitations in her ability to relate appropriately to co-workers and supervisors and with
20 moderate limitations in her ability to tolerate the pressures and expectations of a normal work
21 setting. AR 510-11. He also observed her to be "dejected," "sad," and "morose." AR 519.22 The ALJ, however, discounted Dr. Parlatore's opinions, because they relied solely on
23 plaintiff's self-described symptoms, which the ALJ found to be "sadly lacking" in credibility.
24 AR 32. This rationale is well supported. Testing by Dr. Fitz suggested that plaintiff might be
25 malingering and "attempt[ing] to present herself in a negative fashion." AR 698-703.
26 Similarly, standardized testing performed by Dr. Gilbert showed plaintiff had "intentionally

01 fak[ed] bad or extreme[ly] exaggerat[ed] . . . symptoms." AR 493. He concluded that, while
02 plaintiff was depressed, it was difficult to determine accurately her capabilities. AR 493-94.

03 Norman Gustavson, Ph.D., the Medical Expert ("ME") called by the ALJ, agreed that
04 plaintiff was depressed, the test results were questionable, and plaintiff tended to "exaggerate
05 pathology." AR 157-62. Dr. Gustavson was the only physician to review plaintiff's entire file
06 and, upon doing so, concluded that her complaints of depression were consistent with the
07 record, but exaggerated. AR 162-65. Ultimately, he concluded that plaintiff had a fair ability
08 to relate to others and only moderate limitations on dealing with co-workers and the public.
09 AR 168-70. Given the range of doctors who found plaintiff's self-reporting unreliable, as well
10 as strong evidence of plaintiff's malingering and exaggerated claims, the ALJ did not err by
11 discounting the opinion of Dr. Parlatore.

12 2. The ALJ's Hypothetical Was Accurate and Complete.

13 After a claimant has demonstrated that she has a severe impairment that prevents her
14 from doing their past relevant work, she has made a *prima facie* showing of disability. *Tackett*,
15 180 F.3d at 1100-01. The burden then shifts to the Commissioner at step five to demonstrate
16 that, in light of the claimant's RFC, age, education, and work experience, she can perform
17 other types of work that exist in "significant numbers" in the national economy. *Id.*; 20 C.F.R.
18 § 404.1560(b)(3).

19 When the Medical Vocational Guidelines fail to describe accurately a claimant's
20 limitations, as they did in this case, the ALJ should use them as a framework in conjunction
21 with taking testimony from a Vocational Expert ("VE"). *Reddick*, 157 F.3d at 729; *Tackett*,
22 180 F.3d at 1101. The ALJ must provide the VE with an accurate and detailed description of
23 all the claimant's physical and mental limitations that are supported by the record. *Thomas v.*
24 *Barnhart*, 278 F.3d. 947, 956 (9th Cir. 2002); *Tackett*, 180 F.3d at 1101. An ALJ is free to
25 accept or reject restrictions in a hypothetical question that are not supported by substantial
26 evidence. *See Magallanes*, 881 F.2d at 756-57. A hypothetical that can be said to incorporate

01 fairly plaintiff's functional limitations satisfies this requirement. *Thomas*, 278 F.3d at 956.

02 In this case, the ALJ's hypothetical appropriately described plaintiff's impairments that
03 were supported by the record. The ALJ found that plaintiff suffered from the severe
04 impairments of "bilateral wrist problems, right elbow problems, obesity, depression, anxiety,
05 and a personality disorder." AR 23. In his hypothetical, he described someone with obesity,
06 epicondylitis ("tennis elbow"), back problems, and carpal tunnel that caused grip manipulation
07 problems, particularly in the left hand. AR 179. These restrictions accurately reflect plaintiff's
08 severe physical impairments. The ALJ's hypothetical also accurately described plaintiff's non-
09 exertional limitations. The ALJ specifically mentioned, depression, anxiety, and "a possible
10 personality disorder." *Id.*

11 Based on all of these impairments and the evidence of record, the hypothetical
12 restricted work to "fairly structured, repetitive sort of work, where you're dealing more with
13 things than people. In other words . . . there may be some superficial interaction, but certainly
14 not working as a team or a group to accomplish whatever the employment objective is." *Id.*
15 He also restricted the exertional category to light. *Id.* These restrictions are consistent with
16 plaintiff's impairments, particularly her difficulty dealing with stress and interacting with others,
17 and thus satisfy the ALJ's burden of providing a hypothetical that accurately portrays all of
18 plaintiff's impairments.

19
20 B. The ALJ Properly Resolved the Conflict Between the VE's Testimony
and the Dictionary of Occupational Titles.

21 Plaintiff argues that the ALJ erred by failing to resolve an apparent conflict between the
22 VE's testimony regarding the types of jobs plaintiff could perform and the descriptions of those
23 jobs in the Dictionary of Occupational Titles ("DOT"). Dkt. No. 13. She argues that the jobs
24 identified by the VE exceed the limitations of the hypothetical and that she cannot actually
25 perform them. *Id.* Defendant responds that the ALJ properly resolved the conflict. Dkt. No.
26 15.

At step five of the disability-evaluation process, an ALJ may rely on the testimony of a VE to determine whether there are a sufficient number of jobs in the economy that plaintiff is capable of performing. SSR 00-4p, at *2. When there is a conflict between evidence provided by the VE and the job descriptions provided in the DOT, however, neither source automatically “trumps.” *Id.* Rather, the ALJ must resolve the conflict by asking whether there is a reasonable explanation for the discrepancy. *Id.* Reasonable explanations include specific job descriptions that differ from the general descriptions in the DOT and the fact that the DOT lists the maximum requirements of jobs. *Id.* at *2-3.

The VE identified three jobs suitable for plaintiff: warehouse worker, office cleaner, and launderer. AR 180-81. Plaintiff argues that the warehouse-worker job was actually the job of “coal sampler,” which requires a significant amount of handling, manual dexterity, and physical work that are incompatible with her impairments. Dkt. No. 13. As the Commissioner points out, however, the coal-sampler position was not identified by the VE — there was simply an error transcribing the job code.¹ The ALJ’s reference to the erroneous code in his decision obviously was based on the error in the transcript. Hence, the ALJ did not err in relying on the VE’s testimony with respect to the warehouse-worker job.

The ALJ’s reliance on the VE’s testimony with respect to the office-cleaner and launderer positions is also free from legal error. Plaintiff argues that some requirements of these jobs are beyond her abilities in light of her impairments. Dkt. No. 13. For instance, she argues that the launderer job requires too much dexterity and that the industrial-cleaner position requires “medium” exertional work and dexterity. *Id.* The VE, however, explained that the DOT titles covered a broad range of jobs and that the specific job types he identified were subsets of those broad categories that corresponded only to “light” exertional work

¹The warehouse-worker job was transcribed as number 922.687-038, but the correct number is 922.687-058. See <http://www.oaj.dol.gov/public/dot/refrnc/dot09b.htm> (Last visited September 16, 2005).

01 demands. AR 180. In other words, the VE explained that the jobs he identified could be
02 performed by a person with plaintiff's impairments. In light of the fact that the ALJ provided
03 the VE with an accurate hypothetical and that the VE identified jobs consistent with that
04 hypothetical, the ALJ did not err by relying on the VE's testimony to find that jobs existed in
05 the national and local economy that the plaintiff could perform.

VIII. CONCLUSION

7 Although this Court has no doubt that Ms. Quiding is suffering from her impairments,
8 the role of the Court is limited to reviewing the ALJ's decision to determine if the findings are
9 supported by substantial evidence. Where the evidence is susceptible to more than one rational
10 interpretation, the Commissioner's conclusion must be upheld. *Thomas*, 278 F.3d at 954. In
11 this case, the Commissioner's decision is free from legal error and supported by substantial
12 evidence.

13 Accordingly, I recommend that the final decision of the Commissioner be affirmed and
14 that the suit be dismissed. A proposed Order accompanies this Report and Recommendation.

DATED this 13th day of October, 2005.

James P. Donohue
JAMES P. DONOHUE
United States Magistrate Judge